IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3970 of 2007
To
FIRST APPEAL No. 3972 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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SPECIAL LAND ACQUISITION OFFICER & 1 - Appellant(s)
Versus
PATEL RAMESHCHANDRA DAHYABHAI - Defendant(s)

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Appearance :
MR SUNIT SHAH, GP for Appellant(s) : 1 – 2 IN FA NO.3970 OF 2007.

MS REETA CHANDARANA, AGP for Appellant(s) : 1 – 2 IN FA NO.3971 OF 2007 TO 3972 OF 2007.
K.M.Sheth for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/09/2007

ORAL JUDGMENT

1. Special Land Acquisition Officer, Narmada Project Unit-12, Bharuch and Executive Engineer, Narmada Yojna Naher Division No.2/3, Karjan, District-Baroda, appellants-original opponents have filed these appeals under Section 54 of the Land Acquisition Act, 1894 against the judgment and award dated 27/1/2005 passed by the learned Civil Judge (SD), Bharuch in Land Acquisition Reference Case No.2819 of 1997 to 2821 of 1997, Main case No.2820 of 1997. By the impugned judgment, the learned judge was pleased to partly allow the reference applications for proportionate costs. The learned Judge has held that the applicants are entitled to receive market price of their acquired land at the rate of Rs.36.50 per sq. mtr. as additional amount of compensation in Compensation Case No.101 of 1994 over and above compensation of Rs.4.09 per sq. mtr. for irrigated land and Rs.2.73 per sq. mtr. for non-irrigated land, which was awarded by the Special Land Acquisition Officer. So in all the learned Judge awarded in all Rs.40.59 per sq. mtr. and Rs.39.23 per sq. mtr. respectively. The learned Judge has also awarded

other amount as per the provisions of the Land Acquisition Act.

2. The State Government has sent a proposal to acquire lands of village Sarbhan, Taluka-Amod, District-Bharuch for the purpose of construction of Sarbhan minor canal of Narmada Yojna which is for the public purpose. On perusal of the said proposal, the State Government was satisfied that the lands of village Sarbhan were likely to be needed for the said purpose. In view of the same, the State Government issued a Notification under Section 4(1) of the Act which provides publication of preliminary notification and powers of officers thereon. The said notification was published in official Gazette on 7/12/1995. After issuance of the said notification, the notice was served on the owners of the land. The said owners have filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer submitted his report under Section 5A(2)of the Act, which provides for hearing of objections, to the State Government. Considering

the said report, the State Government was satisfied that the land of village Sarbhan were needed for the purpose of construction of Sarbhan Minor Canal of Narmada Yojna. Thereafter, the State Government decided to issue notification under Section 6 of the Act which provides declaration that land is required for a public purpose. The said notification was published in the Official Gazette on 27/4/1996. After issuance of the said notification, notices were sent to the interested persons in this behalf.

3. After considering the material placed before him, the Special Land Acquisition Officer has passed an award on 4/3/1997 under Section 11 of the Act which provides for inquiry and award by Collector. The Special Land Acquisition Officer has awarded compensation at the rate of Rs.4.09 per sq. mtr. for irrigated land and Rs.2.73 per sq. mtr. for non-irrigated land to the claimants.

4. As the claimants were of the opinion that the amount of the compensation awarded by the Special

Land Acquisition Officer was inadequate and, therefore, they have filed an application in writing requiring the Special Land Acquisition Officer to refer the matter to the Court for determining the just amount of compensation payable to them under Section 18 of the Act which provides for reference to Court. It may be noted that the said section falls within part-III of the Act which also provides reference to court and procedure thereon.

5. When the matters reached before the learned Judge i.e. Land Reference Court, the registry issued the number as Reference Nos.2819 to 2821 of 1997. Before the Reference Court, the claimants claimed compensation at the rate of Rs.50/- per sq. mtr.

6. Before the Reference Court, the claimants have filed a documentary evidence and also placed oral evidence. Before the Reference Court, the claimants examined following witnesses:

(1) Jagdishbhai Chhotabhai who is happened to be

claimant/administrator of the land in question at Exh.123.

(2) Mahendra Nanubhai Nanavati who is happened to be Assistant Secretary, APMC, Bharuch at Exh.125.

(3) Govindbhai Ranchhodbahi who is happened to be Assistant Secretary in the Sarbhan Co. Operative Agricultural Produce and Processing Marketing Society at Exh.127.

7. The Reference Court noted that no evidence of comparable sale or other evidence of compensation of the market value was produced by the claimants and that enhanced compensation was claimed on yield basis.

8. As the record of the documentary evidence is concerned, the claimants have produced extract of 7/12 of lands at Exh.13 to 15, village form no.6 at Exh.122, average price list of the crops of APMC, Bharuch at Exh.126 and copies of the price of the cotton which have been shown at Exh.128 and 129.

9. Before the Trial Court, Jagdishbhai Chhotabhai has been examined at Exh.123. He has deposed that he has produced the evidence on behalf of the other claimants and all claimants are aggrieved by the compensation awarded by the Special Land Acquisition Officer. Thus, all decided to challenge the same as they felt that the compensation awarded by the Land Acquisition Officer is inadequate. He has deposed before the Court that the lands were having quality of black and fertile land and having facility of irrigation. Some of the claimants were growing cotton, ladyfinger and sugarcane and some of the claimants were growing pigeon pea and ladyfinger. The claimants have also produced extract of 7/12. He has further deposed that they were getting crops by applying modern technique. In first season they were getting crops of 28 quintals of cotton which they used to sell to APMC, Bharuch and other private traders. The claimants have also produced average price list of APMC, Bharuch showing the price of the said crops for the particular year.

10.In the deposition he has also deposed that they were receiving from the crops of cotton Rs.58,800/- per acre and after deducting 35% cultivation expenses, they were getting Rs.38,200/- per acre as net annual income. After taking crops of cotton, they were taking crops of ladyfinger in second season and obtained 150 quintals of ladyfinger which they used to sell it to APMC, Bharuch and other private traders. He has stated that after deducting 35%, they were getting Rs.73,400/- per acre. He has deposed that they were getting the crops of pigeon pea in first season and in two falls, they were getting green pigeon pea, quantifying by 40 quintals per acre and they used to sell it to APMC, Bharuch and other private traders. He further stated that from the crops of green pigeon pea they were getting Rs.62,300/- per acre and they were getting net annual income of Rs.40,500/- after deducting 35% towards cultivation costs. In third fall they were getting 12 quintal dry pigeon pea per acre which they used to sell to APMC, Bharuch and other private traders.

Ultimately, they have stated that they were getting gross annual income of Rs.28,500/- per acre and after deducting 35% cultivation expenses, they were getting net annual income from the crops of dry pigeon pea of Rs.18,500/- per acre. Ultimately, net income from the crops of pigeon pea was Rs.59,000/- per acre. They were getting crop of ladyfinger in second season and ultimately, they were getting net income of Rs.73,400/- per acre after deducting 35% cultivation expenses. He further deposed that the acquired lands were having irrigation facility. To show the said facts, claimants produced 7/12 extracts at Exh.16 to 121 which indicates that there were 100 wells for irrigation. The claimants have also produced copies of receipts of the price of cotton obtained from Sarbhan Co. Op. Agricultural Produce Processing and Marketing at Exh.128 and 129. He also deposed that their acquired land is three to five kms. away from place of Amod taluka and surrounding to their lands, the lands are having high potentiality of industrial and residential. Surrounding to their lands, there are industries of

sugarcane and gin of cotton. The said land is used for both residential and industrial purposes and for ginning of cotton also. He has also deposed that they were having amenities of transport like motor and truck, having facility of telephone, water, academic, education, electricity, cooperative societies, railway track etc. The lands were adjacent to State Highway. He has therefore, deposed that they are entitled for Rs.50/- per sq. mtr. as compensation.

11.The claimants have also examined one Mahnedrabhai Nanubhai Nanavati at Exh.125 who happened to be Assistant Secretary in APMC, Bharuch. The said witness produced price list of APMC, Bharuch to show at what price, the crop is selling in the market. The said witness has also deposed that the price list has been issued after verifying the record of APMC, Bharuch. Claimant Govindbhai Ranchhodbhai, examined at Exh.127 who happened to be the Assistant Secretary of Sarbhan Co. Op. Agricultural Produce Processing and Marketing Society Ltd., Sarbhan has also produced price list

of the society at Exh.128 and 129.

11.1) On the other hand, Chandrakant Shanabhai Solanki who happens to be Special Land Acquisition Officer, on behalf of the opponent examined at Exh.139. He has produced judgment of LAR No.360 of 1992 at Exh.136. He has also produced a copy of the extract of 7/12 at Exh.137. The opponents have also produced a copy of the award of the Land Acquisition Officer in LAR No.101 of 1994 at Exh.140.

12.The Reference Court noted that in this case, the claimants have claimed enhanced compensation on yield basis. On appreciation of evidence adduced namely; extract 7/12 produced by the claimant and documentary evidence which this Court has also referred, which has been produced by the claimants in this behalf, the Reference Court has held that each claimant was able to raise crop of cotton as well as green tuver and ladyfinger in this behalf. After going through the evidence on record, oral as well as documentary evidence, learned Judge of the

Reference Court taken into consideration the rate of Rs.36/- per sq. mtr. as income. The same would be just and proper. The learned Judge has taken into consideration the income from the crop of cotton comes to Rs.73/- per sq. mtr. After deducting 50% gross income towards cultivation expenses against the income of Rs.58,800/- of cotton crops, the same is to come at Rs.29,400/- and if we divide the net income of Rs.29,400/- by 4000/- sq. mtr., it will come to Rs.7.35/- per sq. mtr. Thereafter, the learned Judge has come to the conclusion that after applying multiplier of 10 as held by the Hon'ble Apex Court, it will come to Rs.73/- per sq. mtr. and therefore, ultimately the Reference Court came to the conclusion that the claimants would be entitled to Rs.36.50 as just and proper. Thus, learned Judge of the Reference Court has partly allowed the Reference Case by awarding additional compensation at the rate of Rs.36.50 per sq. mtr. to the claimants by a common judgment and award dated 27/1/2005 which has given rise to the above numbered appeals.

13.The learned AGP for the appellants in these appeal contended that the award passed by the learned Judge is unjust and he has given very excessive amount of compensation and therefore, the judgment and award of the learned Judge is required to be quashed and set aside and the award passed by the Land Acquisition Officer should be confirmed as the same was passed by the Special Land Acquisition Officer after considering several aspects.

14.On the other hand, learned advocate Mr.K.M.Sheth appearing for the claimants contended that the award of the Special Land Acquisition Officer can hardly be regarded as a relevant piece of evidence and as witnesses examined by the acquiring body had not produced any sale deed for consideration of the Court. He further stated that the judgment and award of the learned Judge is based upon oral and documentary evidence. It is further stated that the claimants have adduced in this behalf particularly the crops of cotton, pigeon peas, ladyfinger, grown on the land acquired as well as the price fetched by the sale of the same to APMC,

Bharuch, Sarbhan Co. Op. Society etc. He has further stated that claim of the claimants that they were taking the aforesaid crops should be accepted by this Court also because the witnesses have led evidence which is supported by the documentary evidence. He has also relied upon the evidence of the claimants which shows that they were growing 28 quintal of cotton on the acquired land and the rate indicated at Exh.126 as well as Exh.128 and 129 should accepted by this Court in view of the principal laid down by the Hon'ble Apex Court in the case of State of Gujarat and others vs. Rama Rana and others reported in 1997 (2) SCC 693. In that matter the Hon'ble Apex Court has held that the Court has a duty to consider the oral evidence to great scrutiny and evaluate the evidence objectively, and dispassionately to reach a finding on compensation. Multiplier of 10 should be applied and deduction of 50% towards cultivation expenses should be made. The claimants are also entitled to statutory benefits under amendment Act, 68 of 1984.

15.This Court has heard both the learned advocates and also gone through the evidence on record and paper-book produced by learned advocate Mr.K.M.Sheth, appearing for the claimants in this behalf.

16.Learned AGP Ms.Reeta Chandarana has relied upon the recent judgment of the Hon'ble Court in case of Land Acquisition Officer, A.P. vs. Kamadana Ramkrishna Rao and others reported in (2007) 3 SCC 526 and stated that agricultural income on yield basis, multiplier of 10 to be taken for that purpose. She has also relied upon paragraphs 15, 16 and 17 of the said judgment in this behalf where, the Hon'ble Apex Court has considered the earlier decision in this behalf.

17.In this case, the claimants claimed compensation on the yield basis and after considering the evidence adduced by the claimants, Reference Court has awarded additional amount of compensation at the rate of Rs.36.50 per sq. mtr. after applying multiplier of 10.

18.I have gone through the evidence of Jagdishbhai Chhotabhai produced at Exh.123 and further relevant documentary evidence produced by the other witnesses in this behalf. After going through the same, it is established that the claimants are entitled to Rs.36.50 per sq. mtr. from the crop of cotton instead of Rs.73/- per sq. mtr.

19.After going through the judgment of the Hon'ble Apex Court in case of Rama Rana (supra) as well as Kamadana Ramakrishna (supra) and after going through the evidence on record, this Court is of the view that each of the claimant is entitled for growing 16 quintals cotton per year per acre. The rate of cotton per quintal at the relevant time was Rs.2,100/- produced at Exh.126, 128 and 129 which is the price list of APMC, Bharuch and other co-operative societies which has been produced by the claimants. From that, this Court is of the view that each of the claimant was able to realize income of Rs.33,600/- per year, 50% is deducted towards cost of cultivation it will come to

Rs.16,800/- per year per acre from the sale of cotton.

20.This Court also relied upon the judgment of the Hon'ble Apex Court in case of Land Acquisition Officer vs. P. Veerabhadrappa, reported in AIR 1984 Sc 774 (Para 7, on page 777), wherein the Hon'ble Apex Court has held that 50% should be deducted towards the costs of cultivation. If 50% is deducted from 33,600/- the net income which would come to Rs.16,600/- per year per acre from the sale of cotton. An acre is equivalent to nearly 4000 sq. mtr. Therefore, in order to arrive at income from agricultural produce per sq. mtr. the figure of Rs.16,800/- will have to be divided by 4000 sq. mtr. which will bring the price of the land acquired at Rs.4.20 per sq. mtr.

21.As indicated above, for the agricultural income the basis of the capitalization principle, proper multiplier to be applied. It multiplier of 10 is applied then income derived from sale of cotton would be Rs.42/- per sq. mtr. The Reference Court

in this case has awarded compensation payable to the claimants at the rate of Rs.36.50 per sq. mtr. as additional compensation and the Special Land Acquisition Officer has awarded Rs.4.09 per sq. mtr and Rs.2.73 per sq. mtr. respectively. Thus, total amount awarded to the claimants is Rs.40.59 per sq. mtr. and Rs.39.23 per sq. mtr. which cannot be regarded as excessive at all.

22.Thus, after going through the oral and documentary evidence, this Court is of the view that the learned Judge of the Reference Court has given just award and price per sq. mtr. is just and correctly arrived at after applying the principle laid down by the Hon'ble Apex Court. Thus, these appeals filed by the Government will have to be dismissed. In the result, all the appeals fail and are dismissed. Ultimately, there shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment.

(K.M.Mehta, J.)

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